

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Application of: )  
)  
Graham Edmund KELLY ) Group Art Unit: 1623  
)  
Reissue Application No.: 09/602,191 ) Examiner: Patrick T. Lewis  
)  
U.S. Patent No.: 5,830,887 ) Confirmation No. 8264  
)  
Filed: June 22, 2000 )  
)  
For: HEALTH SUPPLEMENTS )  
CONTAINING PHYTO- )  
OESTROGENS, ANALOGUES )  
OR METABOLITES THEREOF )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**STATEMENT OF SUBSTANCE OF INTERVIEW**

Applicant's undersigned representative now provides this Statement of the Substance of the Interview held with Examiner Lewis on October 6, 2008, pursuant to § 713.04 of the MPEP. This Statement is being filed within one month of the October 8, 2008, mailing date of the Interview Summary and is therefore timely filed.

In the Interview Summary, the Examiner indicated that, upon further review by a Supervisory Patent Examiner, an "error" was found in the Third Supplemental Reissue Declaration filed on November 16, 2007, specifically that the Declaration should have claimed priority "under 35 USC 119 (a-d) or f, or 365(b)." To correct this "error," the Examiner suggested the submission of form PTO/SB/51 together with an attached form PTO/SB02B. The Examiner reiterated that "a supplemental oath/declaration is required."

As the outset, the undersigned wishes to thank the Examiner for the courtesy extended in the interview and for his sincere apology for the lengthy prosecution. However, upon careful review of the governing provisions of Title 37 of the CFR and of the MPEP, Applicant has not identified any requirement for specifying the subsection of Section 119 in a claim for priority in an oath or declaration, nor was any requirement provided after a telephone request to Special Programs Examiner Jean Vollano. Moreover, consultation with members of the Office of Patent Legal Administration indicated that they were not aware of any such requirement. Indeed, to the extent there is any discussion regarding a claim for benefit, the MPEP indicates that the claim for priority need not be in any special form. Specifically, as set forth in MPEP 201.14(b) at page 200-87:

For all applications, the **claim to priority need be in no special form**, and may be made by a person authorized to sign correspondence under 37 CFR 1.33(b). No special language is required in making the claim for priority, and **any expression which can be reasonably interpreted as claiming the benefit of the foreign application is accepted as the claim for priority**. The claim for priority may appear in the oath or declaration, an application data sheet (37 CFR 1.76), or the application transmittal letter with the recitation of the foreign application. [Emphasis added.]

Accordingly, Applicant believes that each of the Declarations submitted in this application, including the one filed on November 16, 2007, has correctly and appropriately recited a claim for priority and that no supplemental declaration is required. Applicant therefore respectfully requests the consideration and timely issuance of a Notice of Allowance.

If there are any other issues regarding the Declaration or any other matter in this case, the undersigned earnestly requests the Examiner to contact her at his earliest convenience. In light

of the issuance of a *Quayle* action on March 4, 2008, Applicant sincerely hopes that the Notice of Allowance will be soon forthcoming.

Should any fee be required for this filing, please charge any required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: November 6, 2008

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